

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|-------------------------------------|---|---|---------------------------------|
| Investigator: Julia Moran | Team: Squad #6 | CCRB Case #: 202004214 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 06/02/2020 3:30 PM, Tuesday, 06/02/2020 4:00 PM, Tuesday, 06/02/2020 9:46 PM | Location of Incident: 40th Precinct stationhouse | Precinct: 40 | 18 Mo. SOL 12/2/2021 | EO SOL 5/4/2022 | |
| Date/Time CV Reported Fri, 06/12/2020 8:07 AM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Fri, 06/12/2020 8:07 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
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| Subject Officer(s) | Shield | TaxID | Command |
|----------------------|--------|--------|---------|
| 1. POM Michael Rosa | 11024 | 962065 | 040 PCT |
| 2. Officers | | | |
| 3. LT Andrew Johnson | 00000 | 941966 | 040 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------------------|-----------|--------|----------|
| 1. POF Ashlyn Rodriguez | 03458 | 962059 | 040 PCT |
| 2. POM Hector Espada | 29341 | 930106 | 040 PCT |
| 3. POM Ritchie Baez | 10754 | 934440 | 040 PCT |
| 4. POM Ernesto Hernandez | 01562 | 966617 | 040 PCT |
| 5. POM Tajinder Singh | 20665 | 969440 | 040 PCT |
| 6. POF Denise Garciaalmonete | 06616 | 947915 | 040 PCT |
| 7. POM Andre Whyte | 19246 | 962873 | 040 PCT |
| 8. PO Frankelina Hichezpimentel | 29214 | 963070 | 040 PCT |
| 9. PO Ivan Luciano | 05398 | 958845 | 040 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|---------------------|---|-----------------------------|
| A. Officers | Abuse: Inside of the 40th Precinct stationhouse, officers seized § 87(2)(b)'s property. | |
| B.LT Andrew Johnson | Discourtesy: Inside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson spoke discourteously to § 87(2)(b) | |
| C.POM Michael Rosa | Discourtesy: Inside of the 40th Precinct stationhouse, Police Officer Michael Rosa spoke discourteously to § 87(2)(b) | |
| D.POM Michael Rosa | Off. Language: Inside of the 40th Precinct stationhouse, Police Officer Michael Rosa made offensive remarks to § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|---------------------|--|-----------------------------|
| E.POM Michael Rosa | Off. Language: Inside of the 40th Precinct stationhouse, Police Officer Michael Rosa made remarks to § 87(2)(b) based upon race. | |
| F.LT Andrew Johnson | Abuse: Inside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson forcibly removed § 87(2)(b) to the hospital. | |
| G. Officers | Force: Outside of the 40th Precinct stationhouse, officers used physical force against § 87(2)(b) | |
| H.LT Andrew Johnson | Abuse: Outside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson damaged § 87(2)(b)'s property. | |
| I. Officers | Force: Outside of the 40th Precinct stationhouse, officers used physical force against § 87(2)(b) | |
| J.LT Andrew Johnson | Discourtesy: Outside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson spoke discourteously to § 87(2)(b) | |
| K.LT Andrew Johnson | Off. Language: Outside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson made offensive remarks to § 87(2)(b) | |
| L.LT Andrew Johnson | Discourtesy: Outside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson spoke discourteously to § 87(2)(b) | |

Case Summary

On June 12, 2020, § 87(2)(b) filed the following complaint online with the CCRB.

On June 2, 2020, at approximately 3:30 p.m., § 87(2)(b) was arrested for disorderly conduct. Following his release with a summons, his property was returned except for a plastic bag with makeup (**Allegation A: Abuse of Authority** – § 87(2)(g)).

As § 87(2)(b) left the stationhouse, he got into an argument with PO Hector Espada and PO Michael Rosa of the 40th Precinct and was subsequently arrested for disorderly conduct. Lt. Andrew Johnson allegedly responded, “Fuck that. EDP him.” (**Allegation B: Discourtesy** – § 87(2)(g)). PO Rosa then allegedly told § 87(2)(b) he was “dirty,” “homeless,” and a “bum” and had “trappy” dreadlocks (**Allegation C: Discourtesy** – § 87(2)(g)) and **Allegations D and E: Offensive Language** – § 87(2)(g) within Allegation C). § 87(2)(b) was then removed to § 87(2)(b) Hospital for psychiatric evaluation (**Allegation F: Abuse of Authority** – § 87(2)(g)).

At around 9:46 p.m., § 87(2)(b) returned to the 40th Precinct stationhouse. As § 87(2)(b) was walking away from the stationhouse, multiple officers allegedly pushed § 87(2)(b) on his back and shoved him to the ground (**Allegation G: Force** – § 87(2)(g)). While § 87(2)(b) was lying on the ground, Lt. Johnson allegedly grabbed § 87(2)(b) ripping his shirt and pulling his backpack off his shoulder, breaking the strap of the bag (**Allegation H: Abuse of Authority** – § 87(2)(g)). Officers then handcuffed § 87(2)(b) and carried him to the middle of the street at the intersection of Alexander Avenue and 138th Street (**Allegation I: Force** – § 87(2)(g)). Lt. Johnson then told § 87(2)(b) to “get the fuck out of here” and that he was “totally crazy” and the “the craziest person” he had ever seen (**Allegation J: Discourtesy** – § 87(2)(g)) and **Allegation K: Offensive Language** – § 87(2)(g), **Allegation L: Discourtesy** – § 87(2)(g). § 87(2)(b) was removed for a second time to § 87(2)(b) Hospital for his ankle.

§ 87(2)(b) received a summons for disorderly conduct (BR 01). § 87(2)(b) Two BWC and three civilian videos were received in regards to this incident (BR 02 – 06).

Findings and Recommendations

Allegation (A) Abuse of Authority: Inside of the 40th Precinct stationhouse, officers seized § 87(2)(b) s property.

At the opening of PO Hernandez’s BWC, PO Hernandez is seen handcuffing § 87(2)(b) outside of the stationhouse. The only items visible on § 87(2)(b) were his black backpack. § 87(2)(b) was then brought inside the stationhouse while officers processed his belongings before he was placed in a holding cell. The BWC offered a full view of § 87(2)(b) and his belongings. At the 3:24 mark, PO Hernandez removed a small black rectangular case from § 87(2)(b) s jacket pocket. PO Hernandez then placed the black box in a property bag at the 4:26 mark. At the 6:09 mark, several officers removed § 87(2)(b) s backpack and the body strap that connected his Go Pro to his torso and placed them in a property bag. PO Hernandez removed a watch from § 87(2)(b) at 6:49 minutes and placed them in the same bag with the rectangular box. No additional items were removed. At no point do officers remove a plastic bag from § 87(2)(b). No plastic bag is visible on § 87(2)(b) s body at any point (BR 03).

§ 87(2)(b) testified that at approximately 3:30 p.m., he was filming officers in front of the 40th Precinct stationhouse when multiple officers told him to cross the street to film. When § 87(2)(b)

refused, PO Hernandez and Lt. Johnson handcuffed him and removed his cellphone from his hands, his black backpack, and a plastic bag filled with makeup. The officers brought § 87(2)(b) into the stationhouse and placed him in a holding cell. PO Hernandez eventually released § 87(2)(b) with a summons for disorderly conduct and returned § 87(2)(b)'s phone and backpack, but not his plastic bag. When § 87(2)(b) asked PO Hernandez about the bag, PO Hernandez responded that § 87(2)(b) did not have a plastic bag and that he should leave (BR 07 -11).

PO Hernandez testified that after removing § 87(2)(b) to the stationhouse, all of § 87(2)(b)'s property, including the backpack, went in a property bag. PO Hernandez did not voucher his property because he was going to return it to § 87(2)(b) when he released him with a summons. PO Hernandez escorted § 87(2)(b) to the cells without incident. PO Hernandez then released § 87(2)(b) with a summons and his belongings. § 87(2)(b) never complained to PO Hernandez about not receiving all of his property (BR 12).

Lt. Johnson testified § 87(2)(b) had a body camera strapped to him and a backpack. Lt. Johnson was not present when § 87(2)(b) left the stationhouse and was not aware of a plastic bag of cosmetics not being returned to § 87(2)(b) or if § 87(2)(b) had it on his person (BR 13).

There was negative results for property vouchers for § 87(2)(b) on June 2, 2020 (BR 14).

§ 87(2)(b) alleged that after he was handcuffed, officers removed his cellphone, backpack, and plastic bag. When he was released from the precinct, PO Hernandez only returned his phone and backpack. However, PO Hernandez's BWC confirmed that at the timeframe when he was alleged to have a plastic bag with him, he only had his backpack and camera. He was not holding any plastic bag and no officer removed a plastic bag from his person. Lt. Johnson and PO Hernandez both testified that § 87(2)(b) did not have a plastic bag on him and they never seized a plastic bag from him and PO Hernandez's BWC corroborated § 87(2)(b) did not have a plastic bag with him. § 87(2)(g)

Allegation (B) Discourtesy: Inside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson spoke discourteously to § 87(2)(b)

Allegation (C) Discourtesy: Inside of the 40th Precinct stationhouse, Police Officer Michael Rosa spoke discourteously to § 87(2)(b)

Allegation (D) Offensive Language: Inside of the 40th Precinct stationhouse, Police Officer Michael Rosa made offensive remarks to § 87(2)(b)

Allegation (E) Offensive Language: Inside of the 40th Precinct stationhouse, Police Officer Michael Rosa made remarks to § 87(2)(b) based upon race.

Allegation (F) Abuse of Authority: Inside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson forcibly removed § 87(2)(b) to the hospital.

There was no BWC footage or civilian video footage that captured these allegations.

§ 87(2)(b) testified that after leaving the stationhouse, at around 4:00 p.m., he got into an argument with PO Espada and PO Rosa. PO Rosa handcuffed § 87(2)(b) and he and PO Hernandez brought him inside the precinct. § 87(2)(b) then started to antagonize the officers by acting like an "asshole" and mocking them in Spanish. Once inside the stationhouse, Lt. Johnson asked the officers why they brought § 87(2)(b) inside for a second time that day. The officers responded they brought § 87(2)(b) in for disorderly conduct. Lt. Johnson responded, "Fuck that. EDP him." While waiting for the ambulance inside the stationhouse, PO Rosa told § 87(2)(b) he was "dirty," "homeless," a "bum" and had "trappy" dreadlocks. § 87(2)(b) was subsequently removed to § 87(2)(b) Hospital for psychiatric evaluation.

Lt. Johnson testified that he did not recall officers bringing § 87(2)(b) back inside for a second summons. He did not recall saying, “Fuck it, EDP him,” but believed it could be possible. He did not know if he was present when officers determined § 87(2)(b) to be an EDP or what § 87(2)(b) was doing that could be considered an EDP. He did not recall if he made the decision to remove § 87(2)(b) to the hospital. When Lt. Johnson encountered § 87(2)(b) earlier in the day, § 87(2)(b) displayed EDP behavior by acting aggressive, agitated, and refusing to listen to reason, however, Lt. Johnson did not know why § 87(2)(b) was determined to be an EDP on this occasion. Lt. Johnson did not hear PO Rosa call § 87(2)(b) “dirty,” “homeless,” or a “bum.” He did not hear any officer call § 87(2)(b) s dreadlocks “trappy.”

Lt. Johnson’s memo book did not note any comments (BR 16).

PO Rosa testified that he did not recall bringing § 87(2)(b) into the stationhouse or determining he was an EDP and removing him to the hospital. He did not recall ever interacting with § 87(2)(b). He did not recall calling § 87(2)(b) “dirty,” “homeless,” or a “bum.” He did not recall referring to § 87(2)(b) s dreadlocks as “trappy” (BR 17).

PO Rosa’s memo book did not note any comments (BR 18).

PO Hernandez testified that after issuing § 87(2)(b) his summons, he went back into the stationhouse. He did not recall being involved with the decision to remove § 87(2)(b) to the hospital for evaluation. PO Hernandez then went to his post on East 149th Street and 3rd Avenue. He did not have any further interaction with § 87(2)(b) on this day. PO Hernandez did not recall hearing any officer call § 87(2)(b) “dirty,” “homeless,” or a “bum” or refer to § 87(2)(b) s dreadlocks as “trappy.”

Police documentation confirmed PO Espada retired on October 1, 2020, and thus he was not interviewed (BR 19).

No AIDED was prepared for § 87(2)(b) on June 2, 2020 (BR 20).

Lt. Johnson, PO Rosa, and PO Hernandez all testified that they did not recall § 87(2)(b) being brought back into the stationhouse at around 4:00 p.m. for a second summons. No officer recalled deciding to remove § 87(2)(b) to the hospital. Lt. Johnson did not recall ever saying “Fuck it, EDP him” and did not recall if § 87(2)(b) was exhibiting EDP behavior during this time. PO Rosa did not have any recollection of the events and did not recall telling § 87(2)(b) he was “dirty,” “homeless,” a “bum” and had “trappy” dreadlocks. No officer recalled hearing such statements. Additionally, no officer could provide an account of § 87(2)(b) s behavior during this time and if he would be deemed an EDP. There was no BWC footage for the incident timeframe and no stationhouse footage was ever requested.

§ 87(2)(g)

Allegation (G) Force: Outside of the 40th Precinct stationhouse, officers used physical force against § 87(2)(b)

The third video footage was obtained from a civilian filming the incident from across the street. The

video started when § 87(2)(b) was already on the ground after § 87(2)(b) was allegedly pushed. A large number of officers can be seen surrounding the 40th Precinct stationhouse (BR 06).

§ 87(2)(b) testified that following the receipt of the second summons, he returned to the stationhouse to retrieve his cellphone and saw there was a protest happening on the corner. § 87(2)(b) pretended to film the protest when PO Ritchie Baez and PO Ashlyn Rodriguez of the 40th Precinct handcuffed § 87(2)(b) and brought him inside the stationhouse to issue him a summons for disorderly conduct. § 87(2)(b) was then released and as he walked out of the stationhouse, approximately eight officers walked behind him and told him to keep walking and go home. When § 87(2)(b) did not walk fast enough, the officers pushed § 87(2)(b) on his back and shoved him to the ground. § 87(2)(b) could not provide any descriptions for the officers who pushed him. § 87(2)(b) injured his left ankle during the process and requested an ambulance. As § 87(2)(b) stated he was issued a summons, no stop was plead.

§ 87(2)(b) testified that she and her roommate, § 87(2)(b) § 87(2)(b) On June 2, 2020, when she went to her apartment window, she saw § 87(2)(b) lying on the ground within the barricaded area of the street. She did not see how he got to the ground. § 87(2)(b) had no recollection of any specific officer's appearance (BR 21).

§ 87(2)(b) testified that on June 2, 2020, at around 9:00 or 10:00 p.m., she saw § 87(2)(b) outside the stationhouse sitting upright on the ground. § 87(2)(b) did not know how he got there (BR 22).

PO Rodriguez testified that she was standing in front of the stationhouse when § 87(2)(b) approached the stationhouse. She did not recall any other officers in the vicinity, but there were officers from Homeland Security present during this time. Either an NYPD or Homeland Security officer was speaking to § 87(2)(b) and PO Rodriguez approached as back up and told § 87(2)(b) to leave. § 87(2)(b) refused, so officers escorted § 87(2)(b) out of the frozen zone that was blocked off on 138th Street. There were multiple other officers escorting § 87(2)(b) out, but she could not recall their identities. The officers, including PO Rodriguez, physically guided § 87(2)(b) out. She did not recall where on his body she or any other officer made contact. As the officers escorted him, § 87(2)(b) fell. She did not know how he fell. She did not recall if she or any other officer pushed § 87(2)(b) or did anything to cause him to fall. § 87(2)(b) claimed he hurt his ankle when he fell (BR 23).

PO Baez testified that he was at the stationhouse entrance assisting officers with arrest processing by patting people down before they were placed in cells. He did not recall any of the other officers present. PO Baez patted § 87(2)(b) down and then passed him to the arresting officer. He did not recall having any conversation with § 87(2)(b). He did not have any further contact with § 87(2)(b) later that day and did not have any interaction with § 87(2)(b) outside the stationhouse (BR 24).

Lt. Johnson testified that on the night of June 2, 2020, there were a large number of arrests by the 40th Precinct. Due to the continued unrest and threats against the 40th Precinct, there were also federal agents protecting the restricted area outside the stationhouse on the night of June 2, 2020. When Lt. Johnson walked out of the stationhouse on 9:45 p.m., he found already § 87(2)(b) lying on the ground in the restricted area. There were both federal and NYPD officers surrounding him. He did not recall any of the officers present.

Officer testimony was consistent that there were a large number of arrested civilians and officers, including both NYPD officers and federal agents, present at the 40th Precinct stationhouse on the night of June 2, 2020. § 87(2)(b) could not provide descriptions of any of the officers present

who allegedly pushed him. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (H) Abuse of Authority: Outside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson damaged § 87(2)(b)'s property.

At the 3:47 mark of the third civilian provided video, Lt. Johnson approached § 87(2)(b) while he laid on the ground outside. Lt. Johnson then grabbed § 87(2)(b)'s backpack and multiple other officers handcuffed § 87(2)(b).

At the 1:03 mark of Lt. Johnson's BWC, Lt. Johnson approached § 87(2)(b) on the ground. Lt. Johnson then grabbed something, but it was unclear what exactly he grabbed or if any property was damaged (BR 02).

§ 87(2)(b) testified that while he was lying on the ground waiting for an ambulance, Lt. Johnson came out of the stationhouse and grabbed § 87(2)(b) ripping his shirt and pulling his backpack off his shoulder. Lt. Johnson pulled at the backpack so hard that the strap broke. Officers then handcuffed him. § 87(2)(b) did not take any pictures of the damage to his shirt or backpack.

Lt. Johnson testified that he did not recall pulling on § 87(2)(b)'s backpack so that the strap ripped. He did not recall grabbing or ripping § 87(2)(b)'s shirtsleeve. Upon reviewing video footage, Lt. Johnson saw himself pull § 87(2)(b)'s backpack, but it did not refresh his recollection of doing so or if any damage occurred to § 87(2)(b)'s backpack from the action. The video refreshed Lt. Johnson's recollection that he initially grabbed § 87(2)(b)'s sleeve while lifting him up to carry him because § 87(2)(b) would not stand but if any damage occurred it would have been accidental.

PO Rodriguez testified that she did not recall if Lt. Johnson ever interacted with § 87(2)(b). She was not aware of any property damage to § 87(2)(b)'s backpack or clothing.

Lt. Johnson and PO Rodriguez testified that they did not recall if Lt. Johnson ever damaged § 87(2)(b)'s backpack or clothing. While Lt. Johnson did acknowledge seeing himself pull § 87(2)(b)'s backpack and sleeve after reviewing civilian footage, it did not refresh his recollection of doing so or if any damage resulted from those actions. The civilian video footage was too far away and did not show any damage to § 87(2)(b)'s belongings. Lt. Johnson's BWC did not depict any clear image of damage to § 87(2)(b)'s belongings.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (I) Force: Outside of the 40th Precinct stationhouse, officers used physical force against § 87(2)(b).

At the 4:16 mark of the third civilian video, Lt. Johnson and three additional officers, picked § 87(2)(b) up by his arms and appeared to carry him. Lt. Johnson and another officer then carried § 87(2)(b) by his arms while a third officer carried § 87(2)(b)'s legs so that he was completely lifted off the ground. The officers carried § 87(2)(b) out of the barricaded zone into the middle of the street. The officers then placed him on the ground. The officers then turn § 87(2)(b) so he laid on his side and then two of the officers picked § 87(2)(b) up again and moved him to the side of the street, closer to the sidewalk and barricades.

At the 1:04 mark of Lt. Johnson's BWC, he repeatedly told § 87(2)(b) to get up. § 87(2)(b) remained on the ground during this time. Approximately four officers then cuffed § 87(2)(b) with zip ties. Lt. Johnson then told the officers not to bring him inside the precinct and to "get him out of here" because he needed to leave. Lt. Johnson then repeatedly told § 87(2)(b) to get up and it appeared the officers then carried § 87(2)(b) out of the barricaded zone.

§ 87(2)(b) testified that he was still waiting on the ground for an ambulance for his injured ankle from when officers previously pushed him to the ground. § 87(2)(b) stated he was "talking shit" and saying things to antagonize the officers. Officers then cuffed his hands behind his back and approximately four to six officers, including Lt. Johnson, carried him to the street. Two officers carried him in front and two officers carried his legs. The officers carried § 87(2)(b) to the middle of the street at the intersection of Alexander Avenue and 138th Street. The officers did not drop him on the ground and he did not sustain any injuries from the contact. The officers then picked him up again and brought him to the curb of the sidewalk where he waited for an ambulance.

§ 87(2)(b) testified that while § 87(2)(b) was on the ground, approximately four to six officers swarmed him. The officers picked § 87(2)(b) up by his shirt and his pants and carried/dragged him past the barricade onto 138th Street. there was still a flow of traffic on 138th Street, so the officers then moved § 87(2)(b) to the side of the road.

§ 87(2)(b) testified at least three officers picked § 87(2)(b) up and dragged him to the middle of 138th Street. Lt. Johnson was the first officer to make contact with § 87(2)(b). The officers appeared to grab § 87(2)(b)'s legs and hands. The officers first moved § 87(2)(b) in the middle of 138th Street, where it appeared they might have hit or kicked him. The officers then dragged § 87(2)(b) to the side of the street where he waited for an ambulance.

Lt. Johnson testified that on June 2, 2020, 138th Street and Alexander Avenue was restricted to the general public and that civilians were only allowed on Alexander Avenue if they had business at the precinct or lived on the block. When Lt. Johnson saw § 87(2)(b) on the ground, he was screaming that his ankle hurt. Lt. Johnson and multiple other officers asked § 87(2)(b) to leave, but he refused to comply. § 87(2)(b) would not get out of the street, which was dangerous for § 87(2)(b) and for officers because vehicles and prisoners were coming into the area. Therefore, Lt. Johnson and other officers carried him closer to the sidewalk. There was no struggle involved when officers carried § 87(2)(b). Lt. Johnson did not recall which officers helped him carry § 87(2)(b). They put him down outside the restricted area on the corner of 138th Street and Alexander Avenue.

PO Rodriguez testified that at the time of the incident there was a "frozen zone" in effect outside the stationhouse on Alexander Avenue. Homeland Security put it in place and PO Rodriguez did not know exactly why, but no one was allowed to enter the area per Homeland Security. There were barricades to indicate the zone. PO Rodriguez did not recall ever carrying § 87(2)(b) outside of the barricaded area and did not recall any other officer doing so.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Force may be used when a member of service must gain compliance, control, or custody of an uncooperative subject Patrol Guide 221-02 (BR 26).

When officers approached § 87(2)(b) he was inside the barricaded area and was not leaving or complying with officers' commands to do so. § 87(2)(b) testified that he was waiting for an

ambulance inside the area and was purposely antagonizing officers. Lt. Johnson testified, and his BWC corroborated, that he asked § 87(2)(b) to get up and leave multiple times and § 87(2)(b) did not comply. As per the Patrol Guide, officers may use reasonable force when necessary to gain compliance of an uncooperative subject. At the time officers carried § 87(2)(b) he was passively resisting officers' continuous commands to leave the barricaded area by refusing to get up and walk. § 87(2)(g)

Additionally, § 87(2)(b) was complaining of ankle pain. § 87(2)(g)

§ 87(2)(g)

Allegation (J) Discourtesy: Outside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson spoke discourteously to § 87(2)(b)

Allegation (K) Offensive Language: Outside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson made offensive remarks to § 87(2)(b)

Allegation (L) Discourtesy: Outside of the 40th Precinct stationhouse, Lieutenant Andrew Johnson spoke discourteously to § 87(2)(b)

After putting § 87(2)(b) on the street, Lt. Johnson told § 87(2)(b) to “get the fuck out of here” at the 1:47 minute mark. While waiting on the ground for an ambulance, § 87(2)(b) told the officers that he did not commit any crimes. Lt. Johnson responded that he “was totally crazy” and was “the craziest person I’ve ever seen.” Lt. Johnson’s BWC did not clearly show where officers made contact with § 87(2)(b)

§ 87(2)(b) did not allege any profanity or offensive remarks during this time.

Lt. Johnson stated it was very possible he said, “You are totally crazy. You are the craziest person I’ve ever seen.” He said that in exasperation and because he believed it was “objectively true.” He also thought he said something like “stand the fuck up” or “get the fuck out of here” for emphasis in attempt to get § 87(2)(b) to listen to instructions.

DAO-DCT Case number 2017-17005 states that the tribunal has held that profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct (BR 27). The NYPD is committed to accomplishing its mission by treating every citizen with compassion, courtesy, professionalism and respect. Officers pledge to value human life, respect the dignity of each individual and render our services with courtesy and civility Patrol Guide Section 200-02 (BR 28). Officers are prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability Patrol Guide Section 203-10 (BR 29).

Lt. Johnson admitted to using both profane and offensive language when he spoke with § 87(2)(b). Lt. Johnson’s statements were captured on BWC. Lt. Johnson told § 87(2)(b) to “get the fuck out” for emphasis to get § 87(2)(b) to comply with orders to leave. However, at the time the statement was made, officers had already removed § 87(2)(b) from the barricaded area and were waiting for an ambulance for § 87(2)(b). Lt. Johnson admitted he called § 87(2)(b) “crazy” out of exasperation and because he thought the statement was objectively true. He was not engaged in a chaotic or stressful situation.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- [illegible]

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of December 1, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR 33).

§ 87(2)(b)

Squad: 6

| | | | |
|---------------|--------------------|-------------------------|-------------------|
| Investigator: | <u>Julia Moran</u> | <u>Inv. Julia Moran</u> | <u>02/15/2022</u> |
| | Signature | Print Title & Name | Date |

Squad Leader: Jessica Peña IM Jessica Peña 2/17/2022

Signature

Print Title & Name

Date

Reviewer:

Signature

Print Title & Name

Date